

POL00062275
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POL Financial Investigations

Particular v General Criminal Conduct

Criminal conduct can be either '**particular**' or '**general**'. This affects the way a confiscation case proceeds and can lead to distinct confiscation regimes, particular only, general only, or both at the same time.



Particular Criminal Conduct

- **Particular criminal conduct**

‘Particular criminal conduct’ refers to offences that the defendant has been convicted of in the current (confiscation) proceedings and all other offences taken into consideration.



General Criminal Conduct

- **General criminal conduct**

‘General criminal conduct’ means any criminal conduct of the defendant’s, whenever the conduct occurred and whether or not it has ever formed the subject of any criminal prosecution. ‘General criminal conduct’ therefore include any ‘particular criminal conduct’.

This regime depends on the concept of ‘criminal lifestyle’.

- **Criminal lifestyle**

POCA section 75 sets out a number of tests that are applied to determine if a defendant has a criminal lifestyle. A person has a criminal lifestyle if one or more of the following tests are met.



General Criminal Conduct

- **Criminal lifestyle: test one (section 75 (2)(a))**
- The first test is that the defendant has been convicted of an offence specified in POCA Schedule 2. Schedule 2 offences are:
 - any drug trafficking offence;
 - a money laundering offence under POCA section 327 (Concealing) or section 328 (Arrangements);
 - an offence specified by the Secretary of State relating to people trafficking, offences under the Sexual Offences Act 2003, the Asylum & Immigration Act 2004 and the Gang Masters Act 2004, arms trafficking, counterfeiting, intellectual property, pimps and brothels, blackmail; or
 - an attempt, conspiracy, incitement or aiding, abetting, counselling or procuring any one of the above. (The Serious Crime Act 2007 (SCA) enacted in April 2008, at sections 44, 45 and 46, replaces the offences of attempt, conspiracy etc. with new offences of encouraging and assisting an offence).



General Criminal Conduct

- **Criminal lifestyle: test two (section 75 (2)(b))**
- The second test is that the defendant is convicted of offences amounting to “a course of criminal activity”. This test can be satisfied in either one of two ways:
 - the defendant has been convicted in the current proceedings of four or more offences from which they have benefited, and that benefit (together with that from any offences taken into consideration) is not less than £5,000; OR
 - the defendant has been convicted in the current proceedings of any one offence from which they have benefited, and has other convictions from which they have benefited on at least two separate occasions within six years of the date that current proceedings were started. In addition, the total benefit from the offences (and any others that may have been taken into consideration by the court on those same occasions) must be £5,000 or more.



General Criminal Conduct

- **Criminal lifestyle: test three (section 75 (2)(c))**
- The third test is that the defendant has been convicted of an offence which was committed over a period of at least six months and from which the defendant had benefited by not less than £5,000 (which may include benefit from other offences taken into consideration by the court on the same occasion).
- An example may be an offence of theft where an employee has, over the course of several years, stolen funds from a company's petty cash till amounting to in excess of £25,000. The exact dates of each of the thefts may be difficult to prove and therefore the employee was charged with one offence between 1 January 2004 and 31 December 2007.



Assumptions

- **Criminal lifestyle: the assumptions (section 10 (2)(3)(4)(5))**
- If the court decides that a defendant has a criminal lifestyle it must make four mandatory assumptions in deciding the extent to which the defendant has benefited from their general criminal conduct. The sections that define the assumptions within POCA are section 10 (2)(3)(4) and (5) in England and Wales and section 96 (2)(3)(4) and (5) in Northern Ireland.
 1. **Property transferred to the defendant (section 10 (2))**
 2. **Property held by the defendant (section 10 (3))**
 3. **Expenditure by the defendant (section 10 (4))**
 4. **Property free of other interests (section 10 (5))**



What do the court receive to decide?

The Financial Investigator completes a Prosecutor Statement which is provided to the prosecution, defence and Crown Court:

S16(5) statement – particular criminal conduct cases.

S16(3) statement – general criminal conduct cases

But whilst we invariably complete a S16(3) statement as most cases fall into the general criminal conduct category, we stress that we are happy to pursue particular criminal conduct (e.g. £20k audit shortage then we want £20k back).



Extract 1 from S16(3) statement

- 1.2 It is considered appropriate for the court to proceed under Section 6(4), as it is believed that the defendant has a criminal lifestyle as defined and that it is therefore appropriate for the Court to make the assumptions under Section 10 of the Act in determining the defendant's benefit. The defendant is believed to have a criminal lifestyle as:
- *The defendant has been convicted of an offence committed over at least six months and the benefit is at least £5,000 (Sections 75(2)(c),75(4)*
- 1.3 The Court is therefore required to decide if the defendant has a criminal lifestyle. If the court decides the defendant has a criminal lifestyle it is required to decide if he has benefited from his general criminal conduct. If the court decides the defendant does not have a criminal lifestyle the court must decide if he has benefited from his particular criminal conduct.



Extract 2 from S16(3) statement

- **9.5 Assumptions**
- **A Property transferred to the defendant after the relevant date**

Although the Court may decide under section 1:2 of this statement that the defendant in this case has by definition a “Criminal Lifestyle” the prosecution is content that the benefit that the defendant has obtained from his criminal conduct is wholly detailed in the defendants “Particular Criminal Conduct” of this statement and in this circumstance there may be a serious risk of injustice if this assumption was made.

NB: the same text is entered against the other Assumptions (i.e. property held, expenditure, property free of other interests)



What does the court do?

- **Q. Does the defendant have a criminal lifestyle (S.75)?**
- **A:No:**
- The court must decide whether the defendant has benefitted from their particular criminal conduct. If the result of this is “no” then there can be no confiscation, otherwise the court must then determine the benefit derived from the particular criminal conduct, this will be the **recoverable amount** (S.7(1)) in this type of case.
- **A. Yes:**
- The court must decide the **recoverable amount** (S.6(5)(a)) which is an amount **equal to the** defendants **benefit** from the conduct concerned (S.7(1)).
- This is aggregate value of the offences, including TICs in the current proceedings together with the value of the assumptions by way of S.10



Why do POL pursue Particular Criminal conduct?

Case: Ibstock SPSO (raised 20/08/2008, POLTD/0809/0101)

Defendant: Rudkin

Benefit: £43,894.15 (audit shortage)

S16(3) statement completed by Financial Investigator:

• **Benefit derived as a result of the offences as charged**

Benefit as a result of the theft - **£43,894.15**

• **Benefit as a result of or in connection with the crime**

Gross turnover of business during the relevant period - **£266,565.99**

• **Total benefit - £310,460.14**



Why do POL pursue Particular Criminal conduct?

- The spouse of the SPMR was a senior representative in the National Federation of Subpostmasters (NFSP).
- He complained about the amount being sought via confiscation, in that it far exceeded the amount of the loss to POL.
- John Scott (Head of Security) indicated we should only pursue the particular criminal conduct in this case.
- John Scott (Head of Security) indicated we were no longer to pursue general criminal conduct in other cases.
- Since this case we have only pursued particular criminal conduct in all cases.



Notes - NCA

- NCA are right in that POCA legislation is there for all and cannot rely on views/interpretation of POL or indeed the court.
- DWP did the same and now pursue general criminal conduct as they would lose their accreditation.
- Satisfied Confiscation Orders mean the Home Office get a percentage of funds recovered – as we pursue the loss and also apply for Compensation Order, we get 100% & nothing goes to the Home Office.
- A POL case could be detrimental to other LEA cases – a Judge may say there's no consistency and/or the LEA case is similar to a POL case where particular criminal conduct was pursued.
- POCA isn't there simply for us to get money back ... it has wider meaning and is designed to be draconian and severe.



Notes - POL

- We have adhered to instructions from Head of Security since 2008 in pursuing particular criminal conduct.
- We haven't hidden this – as we declare on each and every S16 statement we have completed.
- No Judge has questioned our approach (though it's accepted that the Judge should apply the POCA principles).
- When accredited, Helens PDP states; **It is the current business policy of Post Office Ltd to only actively pursue Particular Criminal conduct even though many of our cases, including the one I have referred to, qualify for a Criminal Lifestyle.**

